



WD 11.0

Ethics Briefing



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China Lake, 30 March 2004; Point Mugu, 1 April 2004

What You Should Know

- Recognize potential ethics problems
- Know when to contact your Ethics Counselor
- NAWCWD Ethics Counselor:
**John McCollum
Counsel, NAWCWD
(760) 939-3481**



Overview

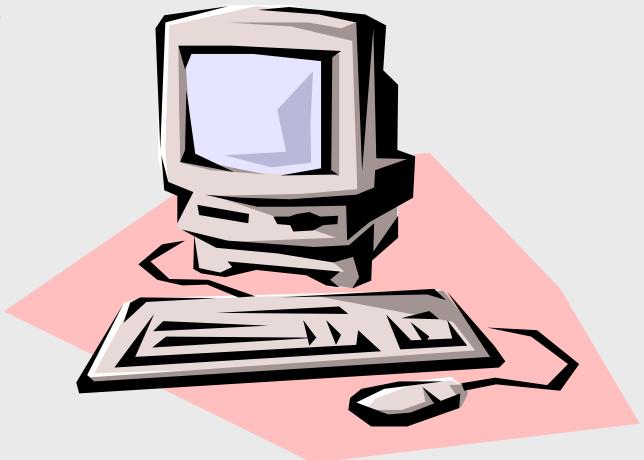
- Use of Government Resources
- Gifts
- Conflicts of Interest
- Outside Employment
- Relationships with Non-Federal Entities
- Fundraising
- Contractors in the Workplace
- Top Five Issues to Watch



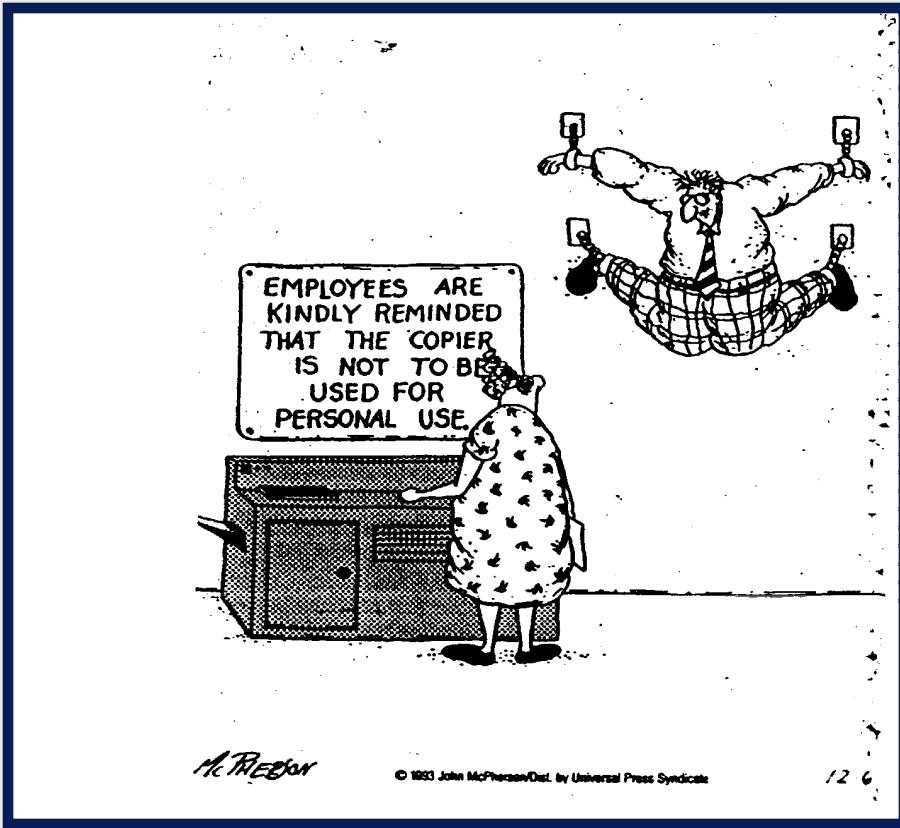
Part 1: Use of Government Resources



- Official Use
- Authorized Use
- Prohibited Use



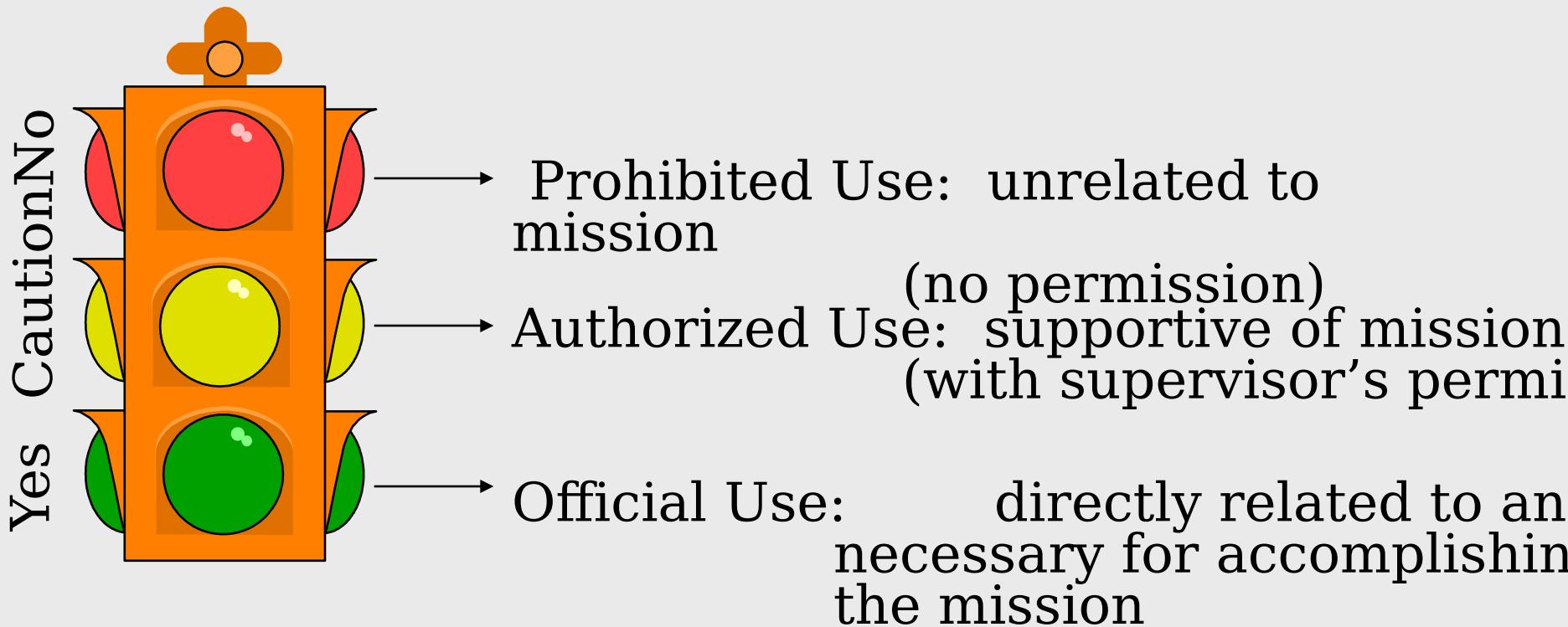
General Rule



“Employees shall protect and conserve Federal property and shall not use it for other than authorized purposes”

5 CFR 2635.101(b)(9)

Types of Use



Prohibited Use

Use of government resources in support of your outside commercial activities is always prohibited.

Types of Resources

- Supplies
- Equipment
- Communications Systems
- Government Vehicles
- Government Time
- Government Position
- Nonpublic Information

Authorized Use of Supplies

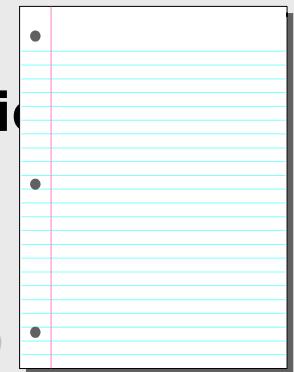
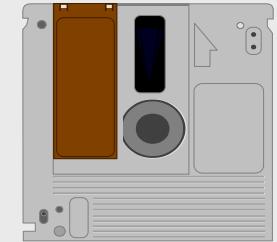
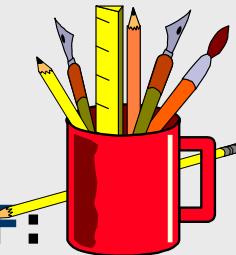
(Paper, Pens, Paper Clips,
etc.)

SUPERVISOR MAY AUTHORIZE USE IF:

- Does not create significant additional cost to DoC
- Must serve legitimate public interest

CONCLUSION: Rarely appropriate to use supplies
for personal use.

**Not appropriate to use supplies
in support of a private business.**

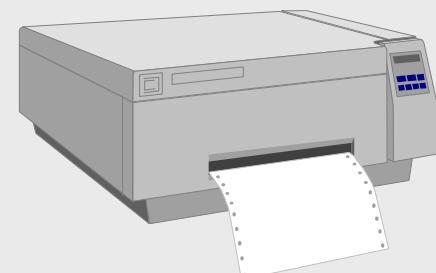
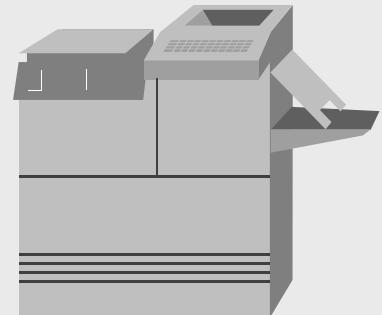
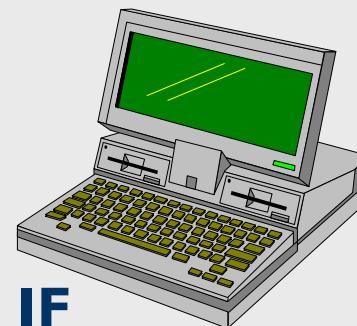


Authorized Use of Equipment

(Computers, Copiers,
Printers)

**SUPERVISOR MAY AUTHORIZE USE IF
ALL OF THE FOLLOWING CONDITIONS
ARE MET:**

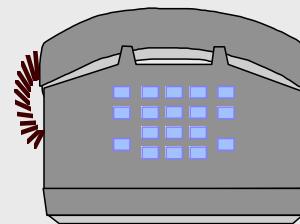
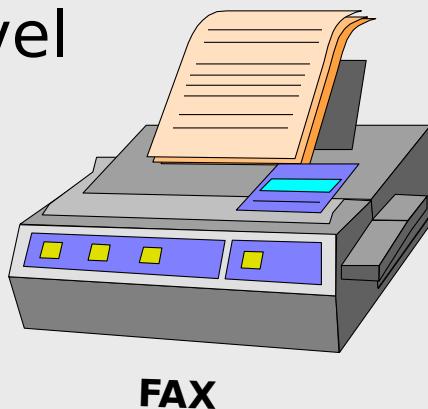
- Does not adversely affect official duties
- Is of reasonable duration and frequency
- Is performed on employee's personal time
- Serves a legitimate public interest
- Does not reflect adversely on DoD



Official Use of Government Communications Systems at Government Expense

Considered Official Use When:

- Necessary in Government's best interest
- Personal communications in emergencies
- Approved personal communications when deployed
- Notify family of schedule change when on official travel



Authorized Use of Communications Systems

Your chain of command *may* permit personal use of government communications systems when all of the following apply --

- **No adverse effect on official duties**
- **Reasonable duration and frequency**
- **On personal time whenever possible**
- **Serve legitimate public interest**
- **No adverse reflection on Government**
- **Do not overburden communications**
- **No significant additional cost to DoD**



Prohibited Use of Communications Systems

- **Pornography**
- **Chain letters**
- **Unofficial advertising**
- **Solicitation or sales**
- **Conducting outside commercial activities**
- **Other inappropriate uses**

Authorized Use of a GOV

- **OFFICIAL USE:** Related to the performance of official duties or in connection with activities conducted under official authorization
- **TDY**
 - Lodging
 - Restaurants
 - Religious Services
 - **NOT** Entertainment



Prohibited Use of a GOV

- For transportation to or from entertainment or recreational facilities
- Personal convenience, errands, business
- As transportation between home and work (except in very limited circumstances requiring the approval of the Secretary of Defense)
- Minimum Penalty - 30 Day Suspension

Official Use of Government Time

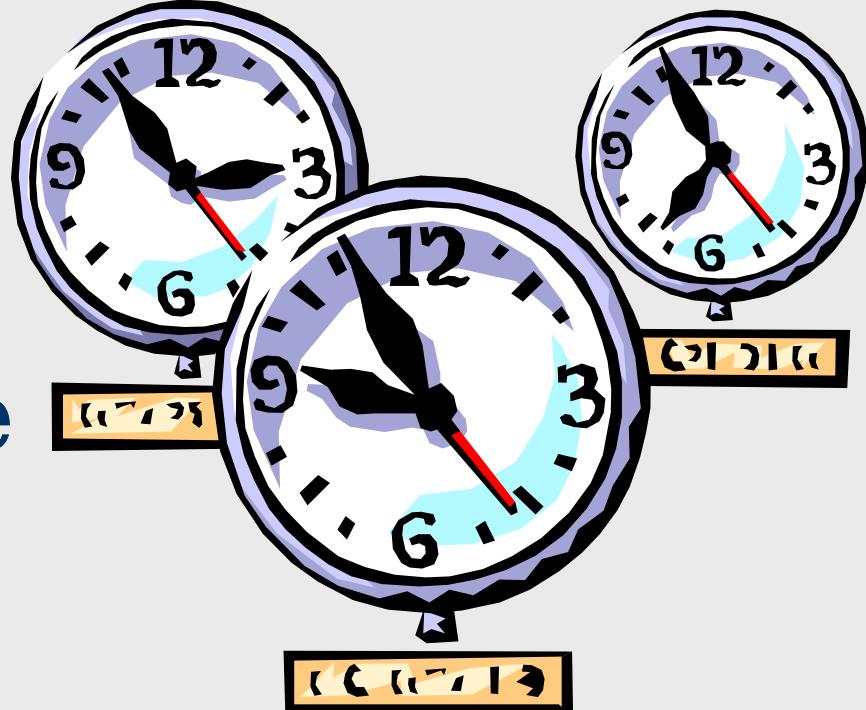


OFFICIAL USE: Accomplish mission

There is no other authorized use of government time.

Prohibited Use of Government Time

May not use your official time to discuss or promote outside business activities.



Prohibited Use of Government Position

- May not use authority of your government office to support private activities
- May not solicit other Federal personnel on the job

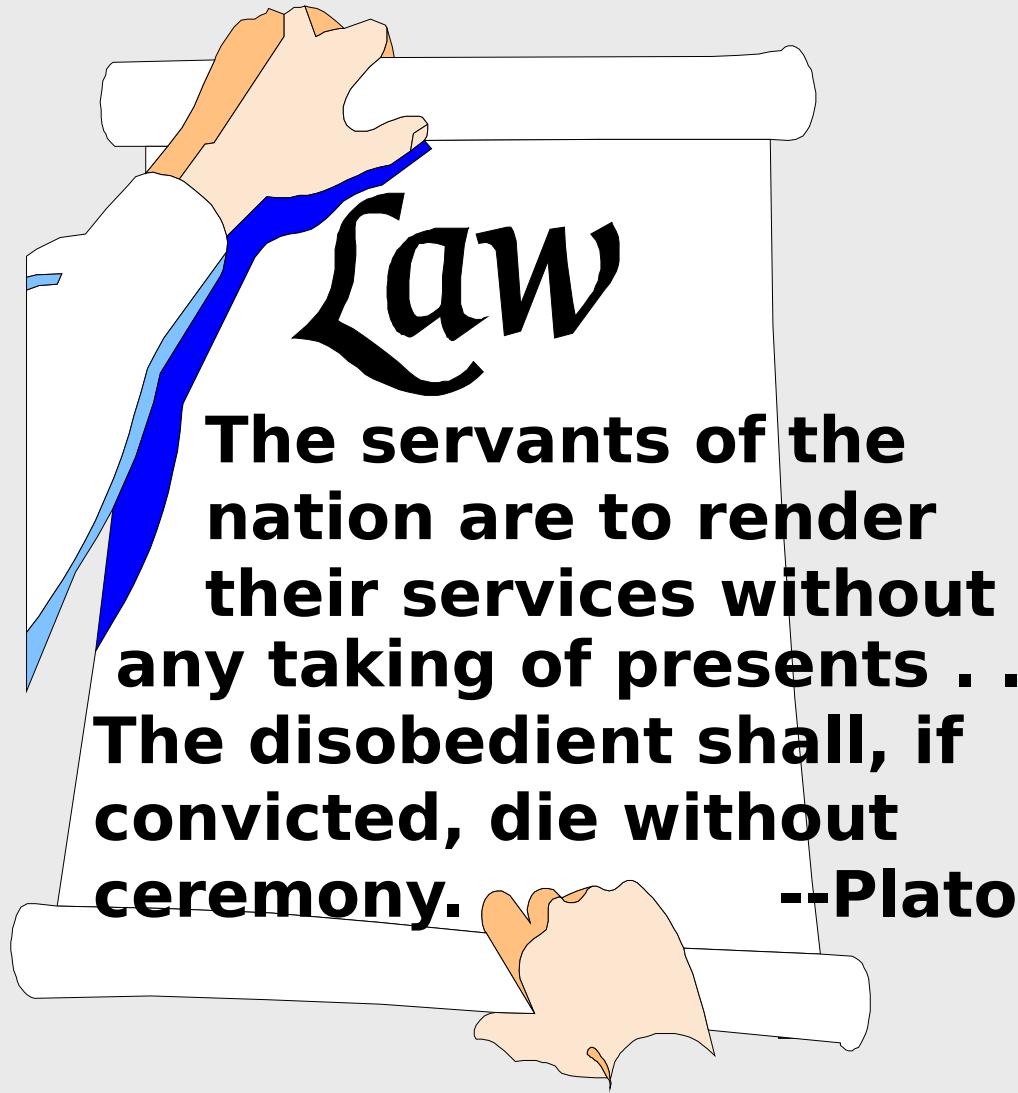
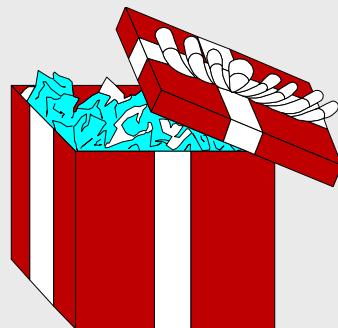


Use of Nonpublic Information

- You may not use for personal business, teaching, speaking, and writing
- Prior security and public affairs clearance of material relating to national security issues



Part 2: Gifts

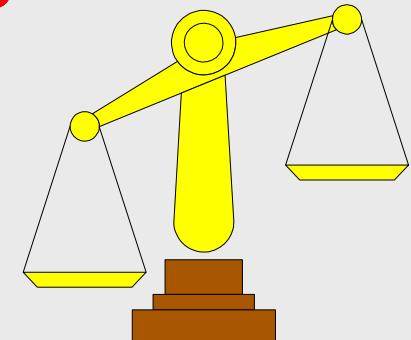


General Rule

An employee shall not solicit or accept any gift or other item of monetary value

1. From a prohibited source; or
2. Given because of the employee's official position

Title 5
United States Code
Section 7353



Gift Acceptance Analysis

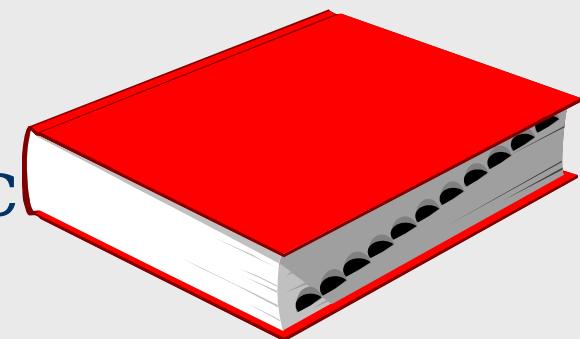


- 1) Is it
 - (a) from a prohibited source, or
 - (b) offered because of your official position?
- 2) Is it defined as a “gift”?
- 3) Is there an exception?
- 4) Is there a limitation on using the exception?²²

Prohibited Sources - Definition

Any person

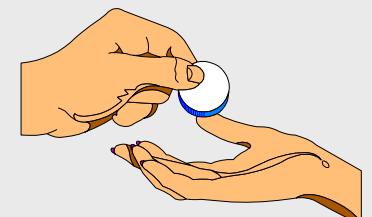
- 1) seeking official action from, doing business with, or conducting activities regulated by, the individual's employing agency; or
- 2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties



Not a “Gift”



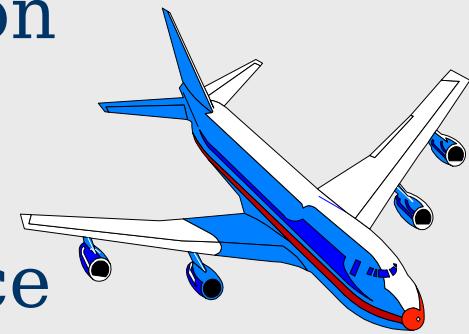
- Modest items of food and refreshment
- Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies
- Loans from financial institutions
- Opportunities and benefits available to the public or a class of employees
- Rewards and prizes to competitors
- Pensions and other benefits from a former employer
- Anything paid for by the Government or by the employee
- Gifts accepted under specific statute



Travel Benefits (31 USC 1353)

When an employee is in a travel status, and when there is no conflict of interest, an agency may accept on behalf of the Government:

- Travel and other actual expenses
- Lodging, meals, and free attendance
- Travel expenses for accompanying spouse when approved by the travel approving authority



Travel Benefits (cont'd)

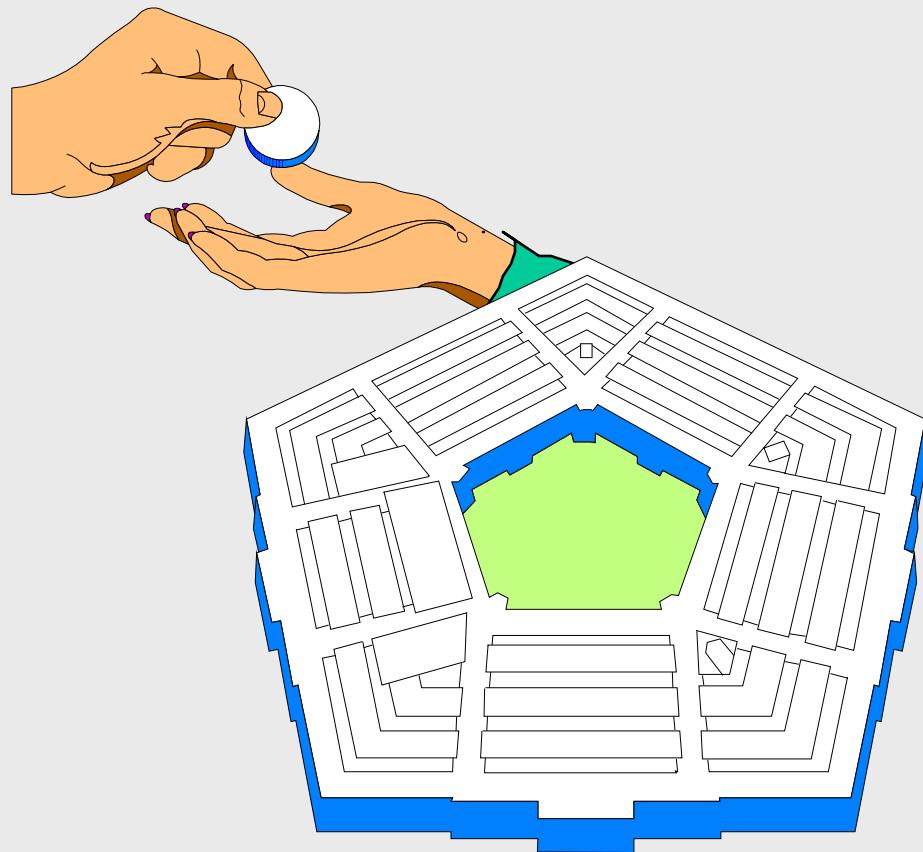
Need approval prior to travel from
your:

- Travel approving authority
- Ethics Counselor

Gifts to the Government

The Secretaries of Defense, Army, Navy, and Air Force may accept, on behalf of the Government, gifts to their agency.

You may not be able to accept a gift, but sometimes the government can – Call Us!



Gift Exceptions – When it is OK to Accept a Gift

Exceptions
to the gift
acceptance
prohibition



Gift Exceptions

- Gifts of up to \$20, up to \$50 per year from the same source
- Discounts and similar benefits

Gift Hypothetical

Your installation recently signed a contract with Big Movie Co. to operate the installation's movie theater. As a gesture of good will, the CEO of Big Movie Co. sends the installation commander 100 movie passes worth \$10 each.

May the installation commander accept the movie passes?

Answer

- 1) Is it from a prohibited source? YES
- 2) Is it a “gift”? YES, if the gift is offered to the commander himself. NO, if the gift is accepted on behalf of the Government or as a benefit available to all Government or military personnel in the area.
- 3) Is there an exception? NO, there is no exception for the commander to accept the movie tickets for himself because the **aggregate** value exceeds the \$20 limit.

But, the commander could accept the tickets under 10 USC 2601 or 2608 (**gift to the Government**) and have an MWR program pass them out to installation employees on a first come first served basis.

Gift Exceptions

- Gifts based on personal relationships
- Gifts based on outside employment
- Awards and honorary degrees



Gift Exceptions – Outside Employment

Meals, lodging, transportation, other benefits may be accepted when:

- (a) due to the **employment activities of spouse** when it is clear that such benefits are not offered because of your official position,
- (b) due to **your outside employment activities** when it is clear that such benefits are not offered because of your official position, or
- (c) customarily provided by a **prospective employer** in connection with employment discussions. Disqualification will be required if the performance or nonperformance of your duties could affect the prospective employer.

Gift Exceptions – Awards

You may accept gifts (other than cash or investment interests) **up to \$200** as a bona fide award **for meritorious public service** from an entity that will not be affected by your official performance. Gifts of cash or of value greater than \$200 may be accepted if an ethics official determines in writing that it is offered under an established program of recognition under which:

- (a) awards are regularly made or which is funded to ensure awards will be given on a regular basis, **and**
- (b) the selection of recipients is pursuant to written standards

Gift Hypothetical

You are a firefighter. UFO Corp. is a contractor. There is a raging fire at a building on base in which the contractor's employees work. You exhibited superior performance and single-handedly saved the building. And the wife of the contractor's president. And his puppy.

To thank you for saving the puppy, the contractor's president takes you to lunch and insists on paying the \$18 for your meal. The next day, the CEO of UFO Corp. invites you to join him for dinner for which you never see a bill. The next day, you sit down for a quiet breakfast alone when a UFO Corp. project officer sits down with you. You ask the waiter for separate checks, but the UFO employee insists on covering the entire amount through his corporate expense account.

Are you in trouble?

Answer – You are in trouble

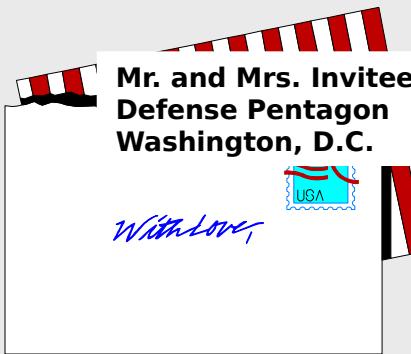
- 1) Is it from a prohibited source? YES, YES, YES, and YES
- 2) Is it defined as a “gift”? YES
- 3) Is there an exception? YES and NO.

The first meal probably qualifies for the *\$20 de minimis* exception. However, you can never accept a gift given to you solely because of your government position.

The second meal probably does not, unless you only had a Caesars salad for dinner. You would need to send a check to UFO Corp. to cover the cost of your dinner if it was over \$20.

The breakfast with the project officer clearly would put you over the limit of \$50 from the same source in a³⁶

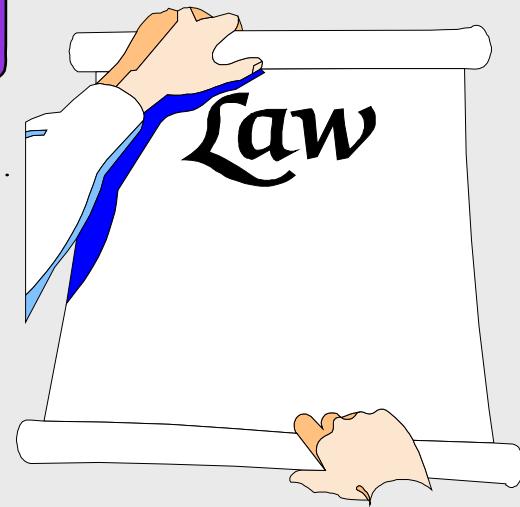
Gift Exceptions



- Social invitations from other than prohibited sources
- Speaking engagements and widely attended gatherings

Gift Exceptions

- Gifts authorized by supplemental agency regulation
- Gifts accepted under specific statutory authority



Limitations on Exceptions



There are 5 limitations
on the use of gift
acceptance
exceptions

**"C'mon, c'mon -
it's one or the
other."**

Limitations on Exceptions

You are never allowed to:

- 1) accept a gift in return for being influenced in the performance of an official act.
- 2) solicit or coerce the offering of a gift.
- 3) accept from the same or different sources on a basis so frequent that a reasonable person would be led to believe you are using your office for private gain.
- 4) accept a gift in violation of any statute (such as accepting a supplementation of your federal salary from a nonfederal source for performing your official duties).
- 5) accept vendor promotional training contrary to applicable regulations.

Gifts Between Employees

An employee shall not, directly or indirectly:

1. Give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift to either his own official superior or that of another; or

2. Accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in an official superior-subordinate relationship.

Gifts Between Employees

- Allowable Gifts

Unsolicited gifts may be given on an **occasional basis** (not routine), including traditional gift-giving occasions, such as birthdays and holidays.

- gifts that are \$10 or less (up to \$300 total value if contributions by subordinates are pooled)
- food consumed at the office (e.g. ice cream)
- personal hospitality

Gifts Between Employees

- Allowable Gifts

A subordinate may give or donate toward a gift to an official superior and an official superior may accept a gift on **special infrequent occasions** such as:

- recognition of an infrequent event of personal significance such as marriage, illness, or birth of a child (would not include a promotion); or
- Upon an occasion that terminates the official superior - subordinate relationship such as transfer, resignation or retirement

Prohibited Gifts – What to Do

- Refuse or return any tangible item
- Pay the donor the full market value (cannot just pay the value over \$20)

Prohibited Gifts – What to Do

Perishable items:

- Destroy
- Give to charity
- Share with the other co-workers

Need to get an OK from supervisor and Ethics Counselor first.

Final word on gifts....

- Frequent flier miles accumulated while on official travel are yours to KEEP!

Part 3: Conflicts of Interest



4 Basic Principles



- No preferential treatment
- Don't misuse public office for private gain
- Government resources only for authorized purposes
- Avoid conflicts between personal interests and your official duties

Basic Conflict of Interest Rule

You may not work for the
Government

on a particular matter

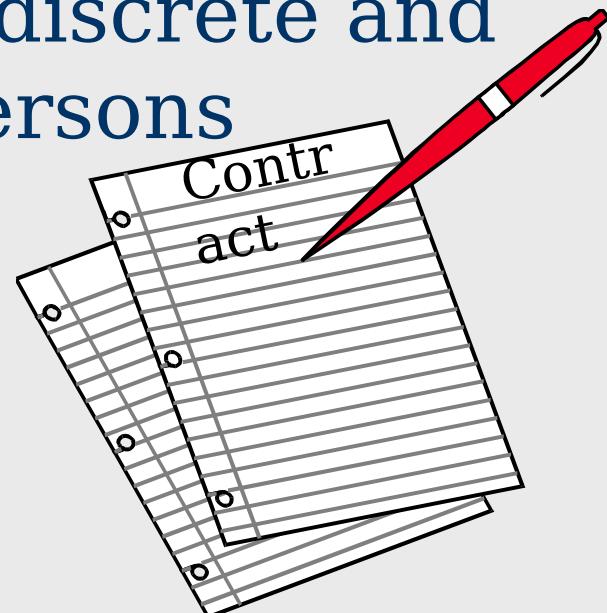
that will affect

your financial interest

18 U.S.C. 208

“Particular Matter”

- Something that involves deliberation, decision, or action, and
- that is focused on the interests of specific persons, or a discrete and identifiable class of persons
- Examples:
 - contract
 - claim
 - application



Basic Conflicts Rule

“Your” Includes:

- Your spouse and minor children
- Your general partner
- An organization for which you are an officer, director, trustee, general partner, or employee
- Any individual or organization with whom you are negotiating or have an arrangement for future employment



Impartiality Rule

A reasonable person
with knowledge of the relevant facts
could question your impartiality in working for
the Government on a particular matter
where certain “persons” whom you know either:

- have a financial interest that is affected by a particular matter, or
- are parties, or represent parties, to a particular matter

Impartiality Rule: Who Are These “Persons”?

- Personal Relationships
 - members of household, relatives, friends
- Businesses /Organizations
 - Anyone with whom you have or seek a business, contractual, or other financial relationship
 - Organizations in which you are an active participant
- Employers

Impartiality Rule: Summary

You may not work on a particular matter if:

Any of those “persons”

- are a party or represent a party to the matter,
or
- have financial interests affected by the matter

And a reasonable person with knowledge of the relevant facts would question your impartiality

Representations to the Federal Government

- Cannot act as an agent for *anyone* before the United States (including your outside business)
- Applies even if NO compensation is accepted
- U.S. includes any federal agency, not just DON or NAWCWD

18 U.S.C. 205

Representation to the Federal Government

- Cannot accept compensation (directly or indirectly) for representation of *anyone* before United States
- U.S. includes any federal agency, not just DON or NAWCWD
- Representation - communication with intent to influence

18 U.S.C. 203

Hypothetical

Question:

You are the troop leader for a local Boy Scout troop.



May you write a letter to NAWS requesting use of the rifle range for target practice?

Answer:

No. Even matters as harmless as this. Since you are a Federal employee, you may not represent others, including Boy Scouts, to Federal agencies, such as the Army, regarding particular matters in which the United States has an interest.

Solution: Ask another Boy Scout leader, who is not a Federal employee, to write the letter.

Outside Supplementation of Salary

You may not accept compensation

for performing your official duties

from any non-Federal source

18 U.S.C. 209



Doing Business with the Government

General Rule -

The government may not contract with an employee or a commercial business owned or substantially owned or controlled by one or more Government employees.

JER 5-402

FAR 3.601

Doing Business with the Government

Why?

To avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees

Doing Business with the Government

Exception -

An exception may be authorized only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

JER 5-402

FAR 3.602

Doing Business with the Government

This is different -

In limited circumstances, you may be permitted to work for a contractor who services NAWS on a matter that is not related to your official duties. You should contact your Ethics Counselor when the situation arises.

Part 4: Non-Federal Employment

- Looking for a Non-Federal job
- Post-Government Employment

Government Property

- Chain of command may permit
 - Reasonable time and frequency
 - Personal time
 - Downsizing
 - No adverse reflection on DoD
 - No significant additional cost



Seeking Employment: Recap of The Rule

- You can't do Government work
- On a particular matter
- That could affect the financial interests
- Of a prospective employer
- When looking for employment

18 U.S.C. 208

Negotiation

Any discussion, however tentative
is considered negotiation for
employment and will trigger this
rule as seeking employm



Not Considered Seeking Employment

If you make an unsolicited communication for the sole purpose of:

- Requesting a job application
- Submitting a resume or employment proposal only as part of an industry or other discrete class

5 C.F.R. 2635

Remedies?

- Disqualification
- Rejection
- Other
 - Supervisory determination
 - Statutory waiver

How long?

- Until either party rejects employment and discussions end
- Until two months after sending resume and no answer

Supervising Is Enough!

- Giving guidance to a Government on a particular matter is enough to count as participating in that matter in your official capacity

5 C.F.R. 2635



Procurement Duties

- You're participating in the source selection of a competitive Government contract worth \$500,000. One of the bidders asks if you would be interested in working for the company.
- May you meet with the company?

Procurement Integrity Act

In a Federal procurement > the
Simplified Acquisition Threshold
(\$100,000):

- Report all employment contacts with bidders or offerors
- When seeking employment with bidders or offerors, special disqualification required

41 U.S.C. 423

Procurement Integrity Act

This Act also prohibits disclosing and obtaining procurement information for:

- every competitive Federal procurement for supplies or services,
- from non-Federal sources,
- using appropriated funds

Representing - Before Leaving

You've become a senior salaried employee of Lobbying Consultants, Inc. (LCI), while you're on a leave status with the Gov't. LCI asks you to work with a client by consulting with its experts, drafting the factual attachments to a letter to the Army, and then signing and submitting the letter.

- May you do, and be paid for, these actions?

Representing Before - the Rule

- You may not
 - Represent anyone else, or
 - Be compensated for representational services made by anyone
 - To any Federal agency or court
 - About a particular matter
 - Involving the Government
 - While you are a Government employee

Representation - After Leaving

Three months later, you are no longer a Government employee, and LCI makes you a partner. The Army has responded with more questions. LCI again asks you to consult with the experts, draft the letter to Army and its factual attachments, and then sign and submit the letter.

May you do these actions, and receive a partnership share?

Representation After - the Rule

- You may not be compensated for representational services made
 - To any Federal agency or court
 - About a particular matter
 - Involving the Government
 - With the intent to influence
 - Which you participated in personally and substantially
 - While you were a Government employee



This is a LIFETIME Prohibition

Post Employment: Representing on Matters

As a Government employee, you gave DoD advice on a proposed merger between Big Missiles and Little Missiles. Big Missiles hires you as a consultant.

May you now call the Justice Department for Big Missiles in an effort to get the merger approved?

Post Employment: Representation Rule ~~(Lifetime Ban)~~

- You may **never** represent
- Anyone else
- Before **any** Federal agency or court
- On the same particular matter
- On which you worked for the Government

Representation Wrinkles

- 1 Could I do it if I didn't get any money?
A. No.

- 2 May I advise Big Missiles on how to approach the Justice Department?
A. Yes.



Post Employment: Official Responsibility (2 Year Ban)

You didn't do any Government work on the merger, but one of your subordinates reviewed it during your last year of service. 18 months after you left, the merger is still going on and on.

May you now represent Big Missiles?

Post Employment: Official Responsibility Representation Rule

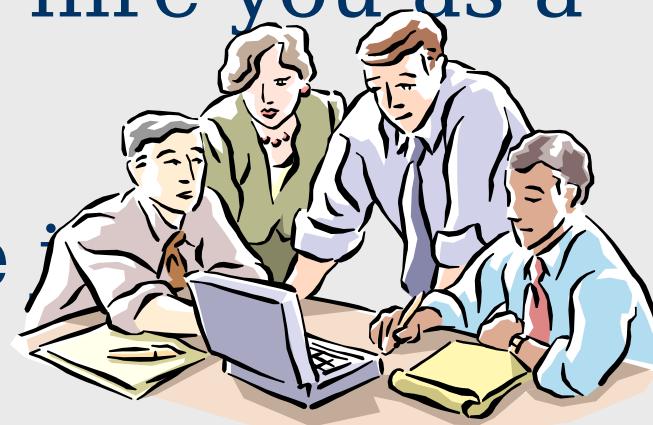
- For **2 years**, you may not represent:
 - Anyone else
 - Before **any** Federal agency or court
 - On a particular matter
 - That was under your official responsibility during your last year in Government service

18 U.S.C. 207(a)(ii)

Post Employment: Procurement Integrity

Six months ago you authorized settlement of a \$15 million claim with High Flying Satellites, a defense contractor. Now High Flying wants to hire you as a consultant.

May you take the : .



Post Employment: Procurement Integrity-the Rule

You may not accept compensation from a contractor:

- For one year after:
 - serving in one of 7 positions, or
 - personally making certain decisions
- If the concerned contract, payment or claim is valued at more than \$10 million

FAR 3.104-3

Positions and Decisions

- Positions
 - Procurement: PCO, SSA, member of source selection evaluation board, and chief of financial or technical evaluation team
 - Program/Awarded Contract: Program Manager, Deputy PM and ACO
- Decisions
 - Award contract, establish rates, approve payment, and settle a claim

Procurement Information

You had access to contractor proposal information while a Government employee. A friend asks you to discuss it to help him with his study on Federal procurement procedures.

May you share the information with him?



Procurement Integrity Act as it Relates to Information

This Act also prohibits disclosing and obtaining procurement information for:

- every competitive Federal procurement for supplies or services,
- from non-Federal sources;
- using appropriated funds

Part 5: Relationships with Non-Federal Entities

Nonprofit Groups

Professional Societies or
Associations

Charities

Educational Institutions

Civic Organizations

Section 1:

Your Official

Duties

Your Official Duties

Official Endorsements

- Action taken, as part of your Government duties, to encourage others to support a non-Federal entity
- Official endorsements prohibited (generally)



Exceptions – You may officially endorse:

- Designated Military Relief Societies
- Combined Federal Campaign (CFC)
- Emergency and Disaster Appeals
Approved by OPM
- Certain organizations benefiting
DoD employees or their dependents
if approved by DoD commanders

(Per JER Chapter 3 Section 2)

Your Official Duties

Logistical Support

- DoD Personnel may be permitted to express DoD policies at non-Federal entity events
- Limited use of DoD facilities and equipment for non-Federal entity events may be permitted if...



Logistical Support (Cont.)

...Not for fundraising or membership drives

- Several criteria must be met
- 2 especially important ones
 - The support serves DoD public affairs or military training interests
 - DoD is willing and able to provide same support to comparable events of other non-Federal entities



JER 3-211

Your Official Duties

Co-sponsorship

- DoD co-sponsors an event if it is one of the organizations that develops the event or provides substantial logistical support for it.
- EXAMPLE: Your command joins Retired Officers Association to produce a retirement seminar.

Co-sponsorship (Cont.)

- Generally prohibited.
- Exception: co-sponsor certain civic or community activities.
- Consult your ethics counselor.
- Alternative to co-sponsorship: contract for services.



JER 3-206

Your Official Duties

Management

General rule: You may not participate in managing a non-Federal entity as part of your official duties.

JER 3-202

QUESTION

Association of Military Comptrollers asks you to join board of directors as a DoD rep. You would be managing the association's affairs. May you accept?



Management (Cont.)

There are a few exceptions requiring written authorization, including:

- Army Emergency Relief
- Air Force Aid Society, Inc.
- Navy-Marine Corps Relief Society
- Coast Guard Mutual Assistance

Your Official Duties

Liaison

- Head of your DoD organization may appoint you as liaison to non-Federal entity if significant and continuing DoD interest.
- You represent DoD, but your opinions do not bind DoD.
- You may not participate in managing the non-Federal entity.
- Whether DoD is allowed to pay a membership fee is a separate question. Contact the Office of Counsel before paying for any fees.

JER 3-201

Section 2:

Your Personal Activities

Your Personal Activities

~~Endorsements~~

- General rule: You may not use your Government authority to endorse a non-Federal entity in your personal activities.
- EXAMPLE: You may not use your DoD signature block to sign correspondence as president of your condo association.

FAR 3-300

Your Personal Activities

Representation

- General rule: You may not represent a non-Federal entity to the Government.
- Exception: uncompensated representation for certain immediate family members or groups composed primarily of government employees
- Consult your ethics counselor first.



Teaching, Speaking, and Writing

Rules are complex. We will touch
on the main points.



Teaching, Speaking, and Writing (Cont.)



You may not accept compensation for personal teaching, speaking, or writing if any of the following is true:

1. You were invited primarily because of your official position rather than your subject matter expertise.
2. The invitation or offer of compensation was made to you by someone with interests that may be affected by the performance of your official duties.

Teaching, Speaking, and Writing (Cont.)

3. Your presentation draws on nonpublic Government information.
4. Your presentation deals with an ongoing or announced DoD policy, program, or operation, or with any matter to which you have been assigned during the last 1-year period.

5 C.F.R. 2635.807

QUESTION

6 months ago as part of your official duties you worked to develop a paint to make DoD buildings invisible from the air. If you use only publicly available information, may you give a speech about the project to a scientific research organization and accept compensation for it?



Teaching, Speaking, and Writing (Cont.)

You may identify yourself by your official position in your personal teaching, speaking, or writing if:

- reference to your position is only one of several biographical details; and
- your position is given no more prominence than other significant biographical details.
- you make a *disclaimer* that the views are your own.

Your Personal Activities

Membership

- You may be a member of a non-Federal entity when acting outside scope of your official duties.
- You may not serve as an officer, member of the board, or in a similar capacity if you are invited to serve because of your DoD position.
- Executive Schedule or a non-career SES members have additional restrictions.

Your Personal Activities

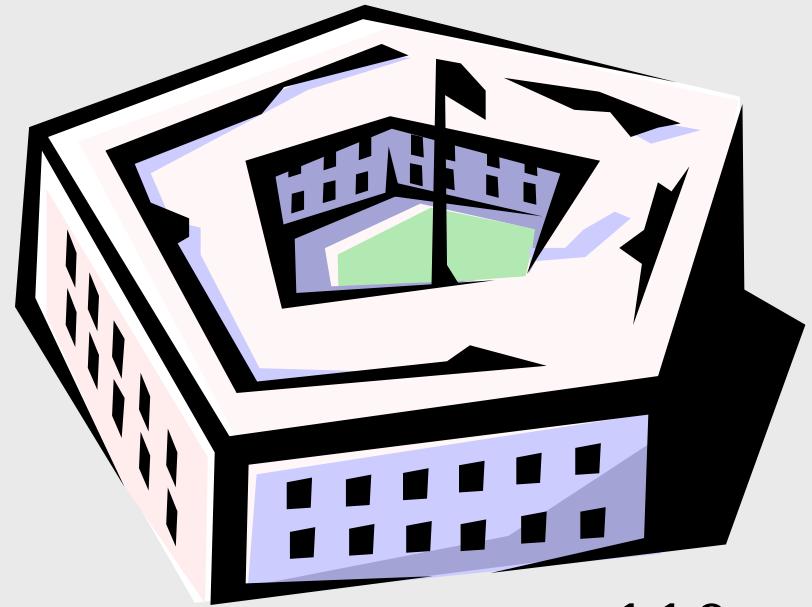
Conflicts of Interest

- Personal affiliations with non-Federal entities could conflict with your official duties.
- Before you do Government work on a particular matter that could affect a non-Federal entity to which you or a member of your family or household have personal or financial ties, check with your ethics counselor.



Part 6: Fundraising

- Official Solicitation
- Personal Solicitation



General Rule

- May not use authority of your government office to support private activities
- May not solicit other ~~Federal~~
personnel on the job



Official Solicitation

VERY LIMITED!

- Requires authorization based on statute, Executive Order, regulation or authority otherwise established by Agency.
 - When authorized, may use official title, position, authority and, sometimes, appropriated funds.

5 C.F.R. 2635

Navy-Marine Corps Relief Society Fundraising

May you endorse with your
Government title?



Official Endorsements Permitted

- Combined Federal Campaign (CFC)
- Emergency Appeals Approved by Office of Personnel Management
- Military Relief Societies
- DOD Employees'/Dependents' Organizations Fundraising Among Own Members

Beware:

Official support DOES NOT include official solicitation of individuals or entities that are not Federal employees (e.g. contractors)

DoD Employees'/Dependants' ~~Organizations~~ Fundraising

- Must receive prior approval by:
 - The ethics counselor
 - Head of the DoD Component
(Commander, NAWCWD or
Commanding Officer, NAWS)

DoD Employees' Organizations Fundraising

- In order to be approved, the event must be:
 - Limited to members of that group
 - Held during personal time only
 - Located in a common area near the employee group's workplace

Funds raised must be used to benefit the members of the employee group

Individual CFC Recipient Organization

- Qualify for official endorsement?
- May your attendance be used to promote fundraising dinners?



NO!

Only CFC, not individual
CFC recipient
organizations, qualifies for
official endorsement

Personal Solicitation

General Rule:

Fundraising in a personal capacity is **prohibited** in the workplace because it:

- Is disruptive
- Competes with CFC
- Invites abuse of power
- Tempts subordinates to curry favor

5 C.F.R. 950.102(a)

Exception

- Organization heads may permit personnel to solicit in their personal capacity in designated areas on Federal installations that are non-workplace.

JER 3-300a(2)

Personal Endorsements

- OK, when clearly personal
- No reference to your government title or position
- General term of address (e.g., military rank or “Honorable”) OK

Common Fundraising Requests

- Official letter of endorsement or support for non-Federal entity for fundraising mailing
 - Prohibited
- Senior official to sit at head table or be honorary chairman at fundraising dinner
 - Unless there is a prior relationship with the organization, likely official was invited due to official position

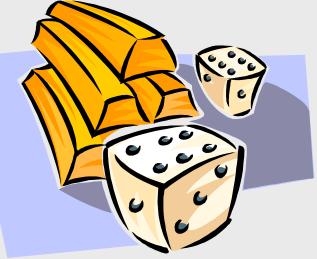
Common Fundraising Requests

- Request for DoD keynote speaker
 - Analyze per 5 C.F.R. 2635.808 and JER 3-211
 - Be cautious to not make endorsements
- May I sell my cookies for my daughter's Girl Scout Troop while at work?
 - No

Common Fundraising Requests

- Request for DoD personnel to attend fundraising dinner
 - So long as not used to promote the event they may “merely attend” in accordance with 5 C.F.R. 2635.808
 - Must pay for the attendance if invited in their official capacity, or use appropriate gift exception

A Word on Gambling



General Rule:

JER 2-303 and California law prohibit gambling on Government property while on official duty

-Note: A raffle that is open to the public, or for which one ticket is handed out to each person attending an event, is not considered gambling. Check with the Office of Counsel if you are thinking about this type of raffle, as other rules apply.

Another Word on Gambling

If you **win** a prize in a raffle, contest or giveaway, you need to contact the Office of Counsel if:

- You won it while on official travel, while performing your official duties or you were entered into the contest because of your official duties (e.g. a purchase card buy from Dell made you eligible to win)
- The winnings are being given to you by a prohibited source (regardless of whether it was won in your official or personal capacity)

Part 7:

Contractors in the Workplace



Contractors in the Workplace

They're Everywhere!

- IPTs
- Advisory and assistance services
- Technical support
- Shared workspaces

Contractors in the Workplace

Remember: Contractor employees are not Government employees

Five Areas of Concern:

1. Gifts from Contractors
2. Use of Government resources
3. Ride Sharing
4. Personal services
5. Contractor access to non-public information

Gifts from Contractors

Gifts shall not be accepted or solicited from
“prohibited sources” (e.g. contractors)

Federal employees may not solicit from contractors
toward special occasion gifts or fundraisers (e.g.
holiday party funds) and must consider appearance
issues when inviting them to office functions

Remember the exceptions-
e.g. Personal Relationship
\$20/\$50
Widely attended gatherings

Use of Government Resources

- Contractor use of Government office space, telephone, e-mail, computers, etc.
- Proper use of Government equipment is governed by the terms of the contract
- Local instructions for use of Government property do not apply to contractor employees
- Contract can be written to make the same rules apply (but not sanctions for violations)

Use of Government Resources

Endorsement of Contractor's Product

- Don't use official Government title/position
- Avoid appearance of endorsement from display of contractor logos (coffee mugs, business cards & brochures)

Character reference/letter of recommendation

- Use of Government letterhead or title/position only if based on personal knowledge gained in official capacity
- Coordinate with Contracting Officer

Use of Government Resources

Letters of Appreciation

- Must be coordinated through the Contracting Officer for the contract
- Must present purely factual information about the contractor employee
- Discouraged because of potential impacts to the contract (e.g. award fees)

Ride Sharing

- Contractors in Government Vehicles:
Do Not Allow!
 - Liability to the Government and/or individual employee
- Government Employees in Contractor Vehicles
Generally, Do Not Allow!
 - May provide for this in the original contract for services
 - If not provided for in a contract, it will be considered a gift and likely not allowed



Personal Services

Personal Services Contract: Any contract that, by its express terms or as administered, makes the contractor personnel appear to be Government employees

It is illegal to receive personal services from a contractor

Personal Services

Key indicia of personal services contracts

1. Performance on-site
2. Principal tools and equipment furnished by the Government
3. Services are applied directly to the integral effort of the command in furtherance of its assigned function or mission
4. Comparable services are performed elsewhere in the same activity or at other activities by Government employees
5. Need for the service provided can reasonably be expected to last beyond a year

Personal Services

Avoid personal services: Do not treat contractor employees as if they were Government employees:

Do not direct step-by-step

Do not supervise performance

Do not “hire” or “fire” or “approve” leave

Do not discipline

Do not include contractors in your training classes
(unless by contract or upon advice of counsel)

Only the Contracting Officers Representation
(COR) can direct performance

Do not allow them to perform inherently governmental functions (e.g. judicial, management, commitment of funds)

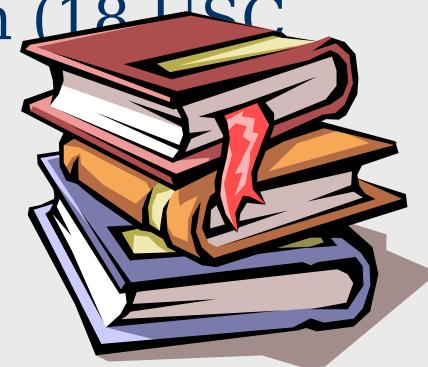
Non-Public Information

Balancing Act

- Protection of sensitive Government information
vs.
contractor's need to know

Restrictions on Government employees

- Procurement Integrity Act (41 USC 423)
- Disclosure of Confidential Information (18 USC 1905)
- Use of Non-Public Information
(Joint Ethics Regs, 5 CFR 2635.703)
- Contract Restrictions



Non-Public Information

If contractor is given access to non-public information:

- It has now been released outside the Government and Government control
- Contractor employees are not covered by same laws and regulations
- Contractor employees are subject to Bribery Statues/ Privacy Act

Non-Public Information

Before giving access to non-public information:

1. Do you have the legal right to do so?
2. Do you need permission to do so?
3. Is the purpose of using it within the scope of the contract?
4. Is there a need to know?
5. Has contractor promised not to further disclose?
 - in the contract
 - by separate agreement



Non-Public Information

Trade Secrets Act: 18 USC 1905

1. Government employees may not divulge information received in the course of their employment or official duties
2. Covers information related to: trade secrets, processes, operations, style of work, statistical data, or information relating to profit, losses or sources of income of any person, firm, partnership or corporation
3. Penalty: Fine and/or 1 year in prison: must be removed from employment

Part 8:

Top Five Issues to Watch

- Representation – 18 USC 203 & 205
 - It is not appropriate for employees to request command support for outside activities (including nonprofits)
- Misuse of Position
 - Watch out for possible endorsement or use of position for private gain, even in situations that may seem innocent
- Sharing Information
 - Be careful about sharing government information with anyone outside the government unless it has been cleared through an official release review

Part 8: Top Five Issues to Watch

- Fundraising
 - Fundraisers for employee groups are allowed, but require advance approval to make sure they are done properly. Email us or LT Randall at Point Mugu.
- Relationships with Contractors
 - Remember that even when we work side by side, we have to be careful to treat contractor employees different than government employees. All of the rules we have discussed today still apply.

Questions?
